Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-805

CALVIN C. FRANKLIN,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

QUESTIONS PRESENTED

Respondent cannot agree with Petitioner's statement of the questions presented to this Court. Petitioner fails to consider the issues in fact appealed to and decided by the Georgia Court of Appeals. Furthermore, he fails to note that other issues were expressly abandoned. Respondent would restate the questions presented by this petition as follows:

I. DID POLICE OFFICERS HAVE SUFFICIENT REASON TO DETAIN PETITIONER IN A *TERRY* TYPE STOP?

II. DID PETITIONER'S ARREST OCCUR AFTER POLICE SAW THE MARIJUANA IN PLAIN VIEW?

STATEMENT OF FACTS

On the 20th day of June, 1976, at 11:45 p.m., Air Traffic Control Specialist W. R. Bennett was on duty at the Anniston Municipal Airport, Anniston, Alabama (ST* 4; 6). A World War II vintage aircraft (A Lockheed Lodestar) came in for a landing (ST 6; 8). It was the type of aircraft he had been instructed to look out for (ST 8). He attempted to contact the aircraft on the standard frequency, but there was no response (ST 7). In the 20 years the air traffic controller had worked at the Anniston Airport (ST 10), there "wouldn't be one out of a hundred that would land without contacting us for services that we provide. Additionally, on that particular night, the weather was of such a situation that it was very close to being what we call instrument-type weather, in which case the aircraft would have been required to contact us" (ST 7).

Petitioner's aircraft aroused Mr. Bennett's suspicions because (1) there were no communications prior to landing, (2) it went abnormally fast when it approached the end of the runway, (3) it was unusual for Petitioner's type of aircraft to land at the airport, and (4) it was the type of aircraft they had been instructed to look out for (ST 6-11; 17). He called the Oxford Police Department and reported a suspicious aircraft (ST 9).

Officer Steve Hudson answered the call (ST 27-28). Petitioner's partner left the aircraft and asked the officer where they were. He told Officer Hudson that they were enroute from Miami to Atlanta. When the officer went back to his vehicle to use the radio, Petitioner's partner boarded the aircraft (ST 29-30).

*"ST" refers to suppression hearing transcript—see Appendix B.

Officer Hudson ran to the aircraft and tried to open the door. He shouted at Petitioner and told him to get out of the aircraft. Petitioner ignored him and started the engines (ST 30-31). Without going through the aircraft checklist, which includes a time consuming magneto check (ST 13), Petitioner and his co-pilot began to taxi. The officer ran to his squad car (ST 31).

Two police cars with blue lights flashing drove parallel to the aircraft and attempted to stop it (ST 13; 33). The aircraft took off and Petitioner escaped into the dark night sky (ST 12).

Anniston Airport authorities notified Birmingham Control, an FAA facility, to pick up Petitioner's aircraft on radar. Birmingham in turn advised Atlanta Air Route Traffic Control to do likewise (ST 16).

Lt. Robert Deariso of the Fulton County Police Department, Atlanta, Georgia, went to Charlie Brown Airport to back up one of his men. They had received word to hold an aircraft for Alabama authorities. On the way to the airport, Lt. Deariso was advised that the aircraft had dropped off of the Atlanta Hartsfield Airport radar and appeared to have landed (T. 36-37; 42).

Officers arrived at the airport. Petitioner's aircraft made a low sweep and landed. Officers blocked the aircraft with their vehicles and told Petitioner to leave the aircraft (ST 37-38). Although they had shotguns, they did not point them at Petitioner (ST 43).

As Petitioner left the aircraft, Lt. Deariso saw "large croaker sacks" in the lighted aircraft (ST 39). The odor of marijuana wafted from the aircraft. It was "very strong" (ST 40; 44). Marijuana was scattered on the floor of the aircraft (ST 40; 41). Officers led Petitioner away to one

of the squad cars (ST 45).

Officers entered the aircraft to see if anyone else was in there (ST 40; 45). Officer Gordon had to climb over the sacks to get to the cockpit. Loose marijuana was everywhere. The officers scooped it up in "big handfuls". (ST 41; 45; 47). The aircraft contained one-and-a-half tons of marijuana.

ARGUMENT

I.

POLICE OFFICERS HAD SUFFICIENT REASON TO DETAIN PETITIONER IN A *TERRY* TYPE STOP.

Fulton County Police Officers in Atlanta, Georgia, detained Petitioner pursuant to a hold order from Alabama authorities. Here, the question is, did Alabama authorities have sufficient articulable facts within their knowledge to create a reasonable suspicion that Appellant was engaged in criminal activity so as to justify an investigatory stop? If the answer to this question is "No", Alabama authorities should not have issued a hold order to Atlanta and the Fulton County Police Officer's investigatory stop must fall. On the other hand, if Alabama officers had justification to momentarily detain Petitioner, the Atlanta stop was authorized.

The courts have stated that where there are reasonable articulate grounds for suspicion, the State's interest in the maintenance of community peace and security outweigh the momentary inconvenience and indignity of an investigatory stop. *U.S. v. Worthington*, 544 F.2d 1275, 1279 (5th Cir. 1977), *cert. denied*, ____U.S.____ (No. 76-1298, Oct. 3, 1977); *U.S. v. Robinson*, 535 F.2d 881, 883 (5th Cir. 1976); *Brisbane v. State*, 233 Ga. 339, 343 (1974).

In the instant case, the following articulable facts known to Alabama authorities gave rise to their attempted investigatory stop and subsequent hold order to Atlanta authorities.

1) Petitioner flew a Lockheed Lodestar World War II vintage aircraft. A lookout had been placed on this type of aircraft (ST 8-9);
2) It was unusual for aircraft of the type Petitioner was flying to land at the Anniston Airport (ST 17);
3) Air Traffic Control Specialist Bennett, who had worked at the Anniston Airport for 20 years, said 99 out of 100 aircraft contact the facility before landing, especially when it is "very close" to "instrument-type weather" (ST 4; 6-7; 10);
4) Petitioner's aircraft went faster than normal on the ramp after it left the runway (ST 9);
5) After Petitioner's co-pilot talked with Officer Hudson, he quickly boarded the aircraft when the officer used his police radio. He refused to open the hatch for the officer and ignored the officer's shouts to disembark (ST 30; 31);
6) When the officer ordered Petitioner and his co-pilot to leave the aircraft, they ignored him, rapidly taxied, and took off without going through the customary, time-consuming aircraft checklist (ST 12; 13);
7) Petitioner ignored the two police cars, with flashing blue lights, which drove parallel to the aircraft, and taxied and took off into the darkness (ST 12; 13; 33).

There was no legitimate or logical explanation for Petitioner's behavior. The articulable facts known to the Alabama officers and the rational inferences drawn from the facts were sufficient to create a reasonable suspicion

that criminal activity was in progress. It was more than a hunch. Hence, the attempted stop by Alabama authorities was authorized by law. *Terry v. Ohio*, 392 U.S. 1, 27, 30 (1968); *U.S. v. Worthington*, 544 F.2d 1275, 1279-1280 (5th Cir. 1977), *cert. denied*, ____ U.S. ____, (No. 76-1928, Oct. 3, 1977); *Cook v. State*, 136 Ga. App. 908, 909 (1975).

The Fulton County Police Officers were asked to hold Petitioner's aircraft for Alabama authorities. They were entitled to act on the strength of the hold order from the Alabama authorities. *accord*, *Whiteley v. Warden*, 401 U.S. 560, 568 (1971); *Silas v. State*, 133 Ga. App. 560 (1974); *Quinn v. State*, 132 Ga. App. 395 (1974). By reason that Alabama authorities had the requisite reasonable suspicion to stop Petitioner, the hold order under which Fulton County officers acted, as a virtual extension of the Alabama police officers, was valid and the stop was lawful.

II.

PETITIONER'S ARREST OCCURRED AFTER POLICE SAW MARIJUANA IN PLAIN VIEW.

Blocking a highly mobile aircraft with vehicles, while armed, is not automatically an arrest. At times it is necessary for an officer to approach a suspiciously dangerous situation with a drawn weapon in order to protect himself and the public. The United States Fifth Circuit Court of Appeals recently stated:

> "We agree with the trial court and reject Appellant's contention that a full-blown arrest occurred at the precise moment that the Customs plane was positioned in front of Appellant's plane, and Customs agent Williams emerged with gun and flashlight in hand. We hold that the stop was made in an acceptable manner under the circumstances present. Blocking the plane was a reasonable manner in which to effect the stop and maintain the *status quo*. An investigatory stop is not automatically an arrest simply because an officer draws his gun. See *United States v. Maslanka*, *supra*, 501 F.2d at 213, n. 10. From following Appellant during his inexplicable flights, and based upon their experience with drug traffickers, the agents reasonably feared death or serious injury "when they stopped and approached Appellant's plane on the dark, deserted airstrip. Carrying a drawn gun was reasonable under the circumstances." *U.S. v. Worthington*, 544 F.2d 1275, 1280 n. 3 (5th Cir. 1977), *cert. denied*, ___U.S.___ (No. 76-1298, Oct. 3, 1977).

The officers in the instant case merely held shotguns, they did not point them at Petitioner. This action is certainly less offensive than that approved in *Worthington* where a high powered rifle was aimed at the pilot.

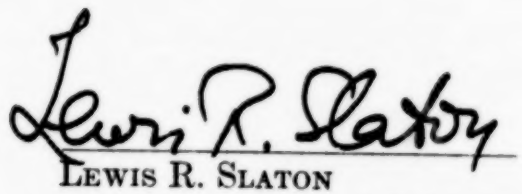
The time an arrest occurs is a question of fact. It depends on evaluation of the testimony of those present at the time. *U.S. v. Worthington*, 544 F.2d 1275, 1279 (5th Cir. 1977), *cert. denied*, ___U.S.___ (No. 76-1298, Oct. 3, 1977). In a Motion to Suppress the judge sits as the trier of fact. *State v. Smith*, 134 Ga. App. 602 (1975). The credibility of the witness is for his determination. *Simmons v. State*, 111 Ga. App. 553, 544 (1965). His judgment should not be disturbed by a reviewing court if there is any evidence to support it. *West v. West*, 228 Ga. 397, 398 (1971); *Brisendine v. State*, 130 Ga. App. 249, 250 (1973).

In the case *sub judice* there is evidence to support the trial judge's finding that an arrest did not occur until the police saw the marijuana in plain view as Petitioner emerged from the aircraft (see Statement of Facts).

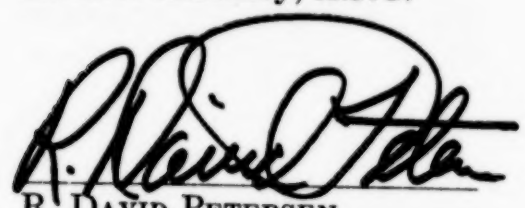
CONCLUSION

By reason that (1) officers had sufficient reason to detain Petitioner in a *Terry* type stop, and (2) Petitioner's arrest did not occur until police smelled and saw marijuana in plain view as Petitioner emerged from the aircraft, the writ of certiorari to the Georgia Court of Appeals should be denied.

Respectfully submitted,



LEWIS R. SLATON
District Attorney, A.J.C.



R. DAVID PETERSEN
Assistant District Attorney
Counsel for Respondent

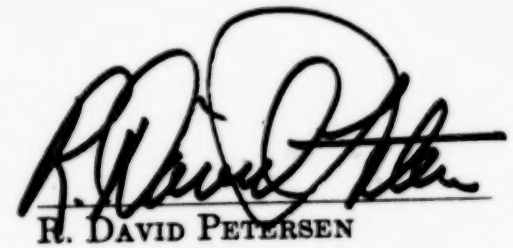
THOMAS W. HAYES
Assistant District Attorney

CERTIFICATE OF SERVICE

GEORGIA
FULTON VOUNTY

I, R. David Petersen, of counsel for the State of Georgia, Respondent in the foregoing case, certify that I have this day served a copy of the foregoing upon Counsel for Petitioner by placing same in the United States Mail, postage prepaid and properly addressed.

March 3, 1978.



R. DAVID PETERSEN
Counsel for Respondent

Appendices

APPENDIX A

In the Court of Appeals of Georgia

C. F. FRANKLIN

v.

The STATE

No. 53600

BANKE, Judge.

The defendant was indicted for violation of the Controlled Substances Act after being found in possession of nearly three thousand pounds of marijuana. The defendant moved to suppress the evidence as the fruit of an illegal arrest. He now appeals from the trial court's dismissal of his motion to suppress.

The defendant was the pilot of a plane which was importing marijuana into the United States. The plane became lost in bad weather and landed at Anniston, Alabama. Before leaving the Anniston airport, the defendant aroused the authorities' suspicion as to the nature of his cargo, and local police attemped unsuccessfully to stop him before he hastily returned to the skies, bound for Atlanta.

Georgia authorities were notified of the plane's approach, and a radio call went out to Fulton County police officers near the Charlie Brown Airport to hold the plane for authorities in Alabama.

Police officers arrived at the airport moments before the defendant's plane landed, blocked the taxiway, and, armed with shotguns, awaited the defentant's arrival. When the defendant landed and neared their cars, he was ordered to get out of the plane. While he was doing so,

officers saw the marijuana inside the plane and according to their version of the facts, arrested the defendant at that time.

The defendant contends that when his vehicle's motion was blocked by police cars and he was accosted by officers armed with shotguns an arrest had already occurred. It is the State's contention that the defendant was not arrested until *after* the officers saw his cargo and that the armed blockage of the taxiway amounted merely to an "investigatory stop," as allowed by *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Because probable cause for an arrest did not exist until the marijuana was actually spotted inside the plane, we must determine whether sufficient evidence existed for a determination by the trial judge that the defendant's initial confrontation with the police was in the context of a *Terry* stop.

1. The defendant landed in Anniston in a World War II vintage aircraft of a type known to be regularly used in drug trafficking. He landed without contacting the control tower, as is customary, and drove his aircraft much faster than is normal on the ramp. He refused to disembark from the plane when asked to do so by Anniston police and took off rapidly, without going through the customary aircraft pre-flight checklist. Based on these observations, Anniston police had an articulable suspicion that contraband was present in the aircraft and thus had the right to detain the defendant for questioning under *Terry*.

The defendant's plane was followed on radar from Anniston to Atlanta. As Fulton County policemen were approaching Charlie Brown Airport, they were notified by radio that the aircraft had dropped off radar at Hartsfield Airport and appeared to have landed. An officer arrived at the Charlie Brown Airport to see a plane make

a low sweep without setting down. There is evidence from which the trial judge could find that the defendant's aircraft was sufficiently determined by Fulton County police to be that which departed from Anniston. Because Anniston officials had sufficient cause to stop the plane under *Terry*, Fulton County police who were notified by radio to hold the plane for Alabama authorities also had sufficient reason to effect a *Terry* stop. *Silas v. State*, 133 Ga. App. 560, 211 S.E.2d 609 (1974); *Quinn v. State*, 132 Ga. App. 395, 208 S.E.2d 263 (1974).

2. Time of arrest is a question of fact which depends upon an evaluation of the testimony by the trial judge. *Rios v. United States*, 364 U.S. 253, 262, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960). There is evidence to support the trial judge's finding that an arrest did not occur until the police saw marijuana in plain view. "Factual and credibility determinations of this sort made by a trial judge after a suppression hearing must be accepted by appellate courts unless such determinations are clearly erroneous. See *Lego v. Twomey*, 404 U.S. 477, 92 S.C. 619, 30 L.Ed.2d 618 (1972), and *United States v. Watson*, 469 F.2d 362 (5th Cir. 1972)." *Johnson v. State*, 233 Ga. 58, 209 S.E.2d 629 (1974).

Blocking the plane with police cars was a reasonable manner of stopping it under the circumstances, considering the possibility of flight by the defendant in a highly mobile aircraft. An investigatory stop is not automatically an arrest simply because an officer is armed with a shotgun. *United States v. Worthington*, 544 F.2d 1275 (5th Cir. 1977); *United States v. Maslanka*, 501 F.2d 208, 213 n. 10 (5th Cir. 1974). It is often necessary for the police to approach a person with a drawn weapon in a suspiciously dangerous situation in order to protect the

physical well-being of both police officers and the public. In fact, in a situation very similar to that sub judice, the United States Court of Appeals for the Fifth Circuit recently held that officers acted reasonably in stopping a pilot suspected of transporting marijuana by blocking his plane and ordering him at riflepoint to disembark. *United States v. Worthington*, supra. The Officers' actions in the case at bar in merely holding shotguns is certainly less offensive than in *Worthington*, where a high-powered rifle was aimed at the pilot.

The Fourth and Fourteenth Amendments to the Constitution prohibit only *unreasonable* searches and seizures. Is a seizure unreasonable simply because the police have taken the precaution to arm themselves in light of unknown danger? We are not prepared so to hold. If we were to reach a contrary result, law enforcement officers would be required to risk their lives by not drawing weapons until drawn upon, unless a hasty legal analysis convinced them that probable cause existed for an arrest.

From *Holtzendorf v. State*, 125 Ga. App. 747, 750, 188 S.E.2d 879, 881 (1972), the defendant quotes, "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." With this statement we have no quarrel; the defendant was "seized" by Fulton County officers when his aircraft's passage was blocked. The *Holtzendorf* quote was taken verbatim from *Terry v. Ohio*, supra, another case where a defendant was seized. However, the court in *Terry* proceeded to hold that the seizure was not unreasonable under the Fourth Amendment—as we have done here. Therefore, the quote from *Holtzendorf* does not support the defendant's contention that he was necessarily illegally arrested.

The holding of this court in *Kelly v. State*, 129 Ga. App. 131, 198 S.E.2d 910 (1973), does not conflict with our finding that no arrest occurred prior to discovery of the marijuana. In Division 2 of *Kelly* this court simply held that there was no "articulable suspicion" to support a *Terry* stop of the defendant's automobile.

Judgment affirmed.

APPENDIX B

EXTRACTS FROM THE TRANSCRIPT OF EVIDENCE

W. R. BENNETT,

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAYES:

Q State your name, please, sir.

A My name is W. R. Bennett.

Q By whom are you employed?

A I am employed by the Federal Aviation Administration.

Q In what capacity?

A I am an Air Traffic Control Specialist.

Q All right, sir. Was that your employer and was that your area of expertise back on the 20th of June, on or about the 20th of June, 1976?

A Yes, sir.

Q Where do you perform these duties for the FAA?

A In the terminal building at the Anniston Municipal Airport, Anniston, Alabama.

Q All right, sir. Directing your attention back to that date, what services were you—were you on duty on that date to begin with?

A Yes, sir.

Q What services were you providing basically?

A The normal range of the flight service facility,

which includes airport advisory with aircraft which have established two-way radio communications with us.

Q All right, sir. What is the nature of that airport there? Can you tell us or tell His Honor what control or what jurisdiction you have over the aircraft involved at that particular airport?

A Yes, sir. The Anniston Municipal Airport is an uncontrolled airport in this respect, that it does not have a control tower. Now our airport advisory system that we give in the nature of wind velocity, altimeter settings, the favored runway in use is on a voluntary basis. The other duties that we have are pre-flight pilot briefing, handling of weather pilot reports, and teletype duties.

Q All right, sir. What were your duty hours on or about this date I have—

A They were from four p.m. until midnight.

Q All right, sir. During that particular duty, toward the close of your duty, around midnight, did you have occasion to have your attention drawn to a particular aircraft there at the airport?

A Yes, sir, I did.

Q Would you explain to His Honor under what circumstances your attention was drawn to that particular aircraft?

A Yes, sir. At about 15 minutes until midnight I observed an aircraft pass by the window on the runway, and I could tell that it was a fairly large aircraft because of the position of the wing lights; also I could tell that it was an aircraft with conventional landing gear. That is one with a tail wheel as opposed to one with a nose wheel. At that time I did not know what type aircraft it was. I

assumed it to be either a twin Beechcraft or Lockheed. After the aircraft turned off at the end of the runway, I took our binoculars that we are provided with, and it, indeed, turned out to be a Lockheed-type aircraft.

The aircraft parked on the fixed base operator's ramp underneath the only burning white light that we have, and at that point, I observed the aircraft with the binoculars. The pilot slid the window open on the left side, but did not leave the aircraft. One other occupant did leave the aircraft.

Q Was there anything unusual about the manner in which the plane landed there that night?

A Yes, sir, in my estimation, there was. I had no communications with the aircraft prior to its landing. The aircraft to me appeared to be moving quite fast at that point on the runway. Normally an aircraft would have slowed down pretty much before reaching the end of the runway.

Q All right. Did you attempt to make any contact with the aircraft by radio?

A To the best of my recollection, I attempted to reach the aircraft on frequency 123.6.

Q What is that, the standard one?

A Yes, sir, that's the standard frequency for airport advisory.

Q Were you successful in your attempt to reach the aircraft?

A No, sir.

Q Did the aircraft attempt or did it make any—initiate any contact with you by radio?

A No, sir.

Q Is there anything unusual about that circumstance?

A Yes, sir.

Q Would you explain to His Honor what is unusual about that?

A Well, nowadays, almost all aircraft are equipped with two-way radios, and I would say probably that there wouldn't be one out of a hundred that would land without contacting us for the services that we provide. Additionally, on that particular night, the weather was of such a situation that it was very close to being what we call instrument-type weather, in which case the aircraft would have been required to contact us.

Q All right, sir. Can you describe the aircraft in any more detail than you have to this point?

A Well, I remember that I could determine the colors of the aircraft after it parked under the light with the binoculars. The colors were blue and white, but I could not read the numbers because it didn't have its side in my direction, only the nose portion.

Q And what was—can you tell us the type of aircraft it was?

A Lockheed Lodestar.

Q And what is that generally used for?

A This is an aircraft that is of World War II vintage, and one that we have—this particular type we have been instructed to be observant for.

Q Who has instructed you to be observant of that particular type aircraft?

A As part of the duties of the FAA.

Q Well, your superiors have given you instructions to be on the lookout for that type of aircraft?

A We have instructions, yes, sir. We cooperate with law enforcement agents, narcotics bureaus, the FBI, and Coast Guard, whichever is required.

Q All right, sir. What is the nature of the instructions that you are given regarding these aircraft?

A We received these by teletype. It is more or less a lookout, similar to what you would have for automobiles. The numbers of aircraft that law enforcement agencies are interested in are transmitted to us and they are posted where we can see them.

Q Was this particular aircraft that landed there that night one of this type that you have been asked to be on the lookout for?

A The type, yes, sir.

Q All right, sir. What did you do after observing this aircraft land there in that fashion?

A I called the Oxford Police Department and advised them that we had an aircraft which probably needed checking out since it was of a suspicious nature.

Q Well, what did you find suspicious? What particular facts made that airplane suspicious to you?

A As I said previously, and landing rollout, plus the absence of any two-way communications; but most probably, the type of aircraft that it turned out to be.

Q Can you explain in a little more detail what you mean by landing rollout?

A Yes, sir. Normally an aircraft is slowed down quite a bit upon reaching the end of the runway. This aircraft in my estimation was still moving quite rapidly, and it seemed that upon coming into the ramp it was still in somewhat of a hurry.

Q All right, sir. You mentioned a moment ago that it would be as rare as one in a hundred planes that would fail to contact you for weather information—

A Yes, sir.

Q —that you provide there for planes that come in and out of that airport. What are the type of planes that don't request this sort of information?

A Most of them would be very small single engine aircraft not equipped with two-way radio or perhaps an agricultural-type aircraft.

Q How long have you worked there at Anniston Airport?

A Approximately 20 years.

Q Do you recall in your experience any aircraft of this size not seeking your assistance once landing there under those circumstances?

A Not unless it was an emergency.

Q All right, sir. Well, in the event of an emergency, once landed, did the individuals seek your assistance at that time?

A Yes, sir, I would think so.

Q And you called based on what you had observed there and your suspicions, you called the Oxford Police. Is that correct?

A Yes.

Q And what did you tell them?

A I told them that we had a large aircraft which had just landed and that I had no communications with it, and that it was of a type which we had been instructed to be on the lookout for, and I thought perhaps it should be checked out.

Q Instructions given to you for purposes of stolen aircraft, aliens and narcotics?

A That's right, the whole range of it.

Q All right, sir. Did the police then come?

A Yes, sir, they did.

Q What did you observe transpire? Let me ask you this first. Did you remain in your office there, your tower, your observation point?

A I did until they arrived because at first they came down to the building where I am rather than going to the ramp where the aircraft was; and I told them that the aircraft was at the opposite side of the airport, and they proceeded then to go back up to the ramp at that point. To answer your question, I went outside to use the binoculars because I could see better out there from the overhead lights.

Q And what did you observe?

A As I have already stated, the pilot, while I was watching him, did not leave the aircraft, but one other occupant did, and went out and met the officers and talked with them; and at this point, my relief appeared as his duty hours would start at midnight, and I was in the process of briefing him as to what I had observed; so part of the time, at this point I was outside the building.

Q All right. Was your attention once again directed toward that plane?

A Yes, sir. Upon briefing my relief, I went back inside the building and my relief was still standing outside, and he called me and told me—

MR. SIEFFERMAN: Your Honor, we would object to anything his relief might have told him. It's hearsay.

MR. HAYES: I won't insist on that.

Q (By Mr. Hayes) As a result of this call from your relief, did you take any action?

A Only when I saw the aircraft crank up.

Q All right. What did you do then?

A When it started its motor, I went back inside thinking perhaps it might call me for some type of airport advisory at this point.

Q Did it?

A No, sir.

Q All right, sir. What happened then?

A I observed the aircraft leave the fixed base ramp and taxi rapidly to the end of the runway, at which point it proceeded to make an immediate takeoff.

Q All right. Is there anything unusual about that?

A Yes, sir. Normally before departure, an aircraft pilot will go through a checklist; he has to check magnetos, and this requires some time depending upon the size and complexity of the aircraft.

Q Are you generally familiar with the particular aircraft we are talking about?

A I'm familiar to this extent, that it is a twin engine aircraft and rather large.

Q Are you familiar with the checklist, the items they have to go through to prepare that?

A Not on that particular aircraft, no, sir.

Q All right, sir. What happened? Did you observe anything else happen?

A Yes, sir. As the aircraft started its takeoff roll, the

two police cars with their blue lights on attempted to stop the aircraft. They were on the parallel taxiway. Our taxiway is the same length as the runway at Anniston. The aircraft was on the runway. The two police cars were for some—most of the time were abreast of the aircraft with their blue lights on. (ST 4-13).

(DIRECT EXAMINATION OF W. R. BENNETT (CONTINUED)

THE COURT: All right. Go ahead.

Q (By Mr. Hayes) Did the plane successfully take off?

A Yes, sir, it did.

Q What did you do at that time?

A At that point—we have inter-phone communications with Birmingham Approach Control, which is another FAA facility. I advised them of the circumstances which had transpired, and I asked them if they could pick up the aircraft on radar.

Q Did that pretty well conclude your involvement with this particular plane?

A The only thing I might possibly add was that Birmingham Approach Control on another inter-phone system advised the Atlanta Air Route Traffic Control, and they in turn activated their radar.

Q All right, sir.

MR. HAYES: I believe that is all I have at this time, Your Honor.

CROSS-EXAMINATION

BY MR. SIEFFERMAN:

Q Mr. Bennett, I have a relatively few number of

questions. How often do you have Learstars or Lodestars land at your Anniston Airport?

A We made a little survey on that a couple of months ago. We average about one a day, sometimes three a day.

Q So it's not all that unusual an event to have a Lodestar or Learstar conversion land at your airport?

A You asked me about a Learstar?

Q Yes, sir. Do you know what a Learstar is?

A Yes, sir, that's a jet.

Q No, sir. The Lear conversion of the Lodestar lengthens the fuselage a little bit.

A The modification, yes, sir. I understand. It is unusual for this type of aircraft to land there. They are just not that numerous anymore. Not that type. I misunderstood your question.

Q The Lodestar.

A I was thinking of the jet-type aircraft.

Q Oh, I see. You do understand, do you not, sir, that there are hundreds of active Lodestars in this country?

A I have no figures on that. I don't see that many. We don't see that many at Anniston. (ST 16-17).

OFFICER STEVE HUDSON,

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAYES:

Q Were you sworn with the other witnesses?

A Yes, sir.

Q State your name, please.

A Steve Hudson.

Q And by whom are you employed now, sir?

A Calhoun County Sheriff's Department.

Q Back on the evening of the 19th-20th of June, by whom were you employed?

A Oxford Police Department.

THE COURT: Who police department?

THE WITNESS: Oxford.

THE COURT: Pull that microphone a little closer.

Q (By Mr. Hayes) Did you have occasion to answer a call out at the Anniston Airport on that particular evening regarding an airplane that landed there?

A Yes, sir.

Q Did you receive a call yourself? What call did you receive?

A That an airplane had landed without authorization.

Q And what did you do as a result of that?

A I was riding with Officer Prittchett and he and I responded to the call and met with—

Q Wait just a minute. I don't think His Honor can hear you. You are going to have to speak a little louder. He is whispering to us and I can't hear him.

THE COURT: All right, son. Keep whispering. We will hear you now.

THE WITNESS: Officer Prittchett and I responded to the call and met with the FAA official.

Q (By Mr. Hayes) What did you do after meeting with the FAA official?

A He pointed to the plane that he had called in about and advised us that that was the one that had landed. It was approximately 300 yards away from the point where he was standing at the time, and we went to that particular part of the airport then.

Q All right. What did you do upon arrival there?

A We had parked in the parking lot of the part of the airport there which is separate from the regular airport, Hendrix Aviation. When we got out of the car, a white male approached me on the passenger side of the car and asked me where he was, and I told him he was in Oxford, Alabama. At that time he said he was bound for Atlanta, Georgia from Miami, Florida, and that his instruments had been knocked out in the rainstorm earlier that night.

Q What other conversation did you have at that time?

A That was it to the best of my knowledge.

Q All right. What did you do then?

A I went back to the car and called the dispatcher to see if FAA officials was going to meet with us over there, and at the same time that I turned around and walked off, the white male—the other three officers on the scene walked around to the plane.

Q All right. Did you communicate with the FAA?

A Not personally. I believe the radio operator did.

Q Did they want to speak to the party?

A He at the time that I walked off, he hadn't got a hold of them yet.

Q When you walked away, what did you do? When you walked away from your car.

A We walked around to the other side of the building

where the plane was.

Q And what did you observe at that time?

A I observed the male, the white male that I had spoken with, getting on the airplane.

Q What did you do at that time?

A I ran up to the door and tried to open it and then tried to look in the window of the plane.

THE COURT: You lost me. You went back to your car to call the FAA. Is that what you said?

THE WITNESS: To call the dispatcher to get him to call the FAA.

THE COURT: Were other officers there talking to the white male when you did that?

THE WITNESS: Yes, sir.

THE COURT: The dispatcher couldn't get in touch with them and you left the car and walked back around the building. You were parked on the other side of a building from the airplane?

THE WITNESS: Right, sir.

THE COURT: After you did that, what did you see?

THE WITNESS: The man that I had had the conversation with was getting on the plane.

THE COURT: And where were the other three officers?

THE WITNESS: Two of them was standing to the left of the left wing, about ten feet out from the plane, and the other one was standing to the rear of the tail section of the plane.

THE COURT: All right. Go ahead.

Q (By Mr. Hayes) What happened then?

A The man had gotten on the plane. I tried to open the door.

Q Did you say anything to anybody there?

A I hollered at the pilot for him to get out of the plane.

Q What did you tell him, anything else?

A Not to him. He started the engine, the right engine about the same time.

Q Did you see him? How close were you to him?

A I'd say 20 feet.

Q What did he do, if anything?

A Turned and kind of gave a smile or frown.

Q And what did he do then?

A Started the right engine of the plane, then the left engine; and as soon as he got the left engine started, the plane began to taxi off.

Q All during the time were you shouting for them to stop and get out of the plane?

A Yes, sir.

Q And they ignored you?

A Right.

Q Were you within 20 feet of the plane?

A Yes, sir. (ST 27-31).

(DIRECT EXAMINATION OF OFFICER STEVE HUDSON CONTINUED)

A Right, had the blue lights on.

Q Is it just for one car or more than one car?

A No, sir. Officer Prittchett was in a car to the rear of mine.

MR. HAYES: He's with you.

CROSS-EXAMINATION

BY MR. SIEFFERMAN:

Q Officer Hudson, are you a licensed pilot?

A No, sir.

Q Is this correct, Officer Hudson, at no time did you observe that airplane or either of the individuals in it violate any law?

A Just failure to obey an officer. (ST 33).

LIEUTENANT ROBERT DEARISO,

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAYES:

Q All right. You were sworn with the other witnesses, were you not?

A Yes, sir.

Q What is your name, sir?

A Robert Deariso.

Q By whom are you employed?

A Fulton County Police Department.

Q What capacity?

A As a lieutenant.

Q What was your assignment back on the evening of the 19-20 of June, 1976?

A Morning watch commander.

Q How long have you been a police officer?

A Since January, 1961.

Q All right, sir. Did you receive a call to the Charlie Brown-Fulton County Airport on this particular morning in question?

A One of my men received the call. I went to back him up on the call.

Q Did you hear the call at the same time?

A Yes, sir, I did.

Q What call did you receive?

A Heard this airplane was a few miles out, seemed to be approaching to make a landing at Charlie Brown Airport. We was asked to hold the plane for authorities in Alabama.

Q What did you do upon hearing that request to one of your men over the radio?

A I started toward the airport with it.

Q Did you receive any other information over the radio regarding this airplane during the time you heard that and proceeded to the airport?

A Yes, sir. We was advised he had dropped off radar from Hartsfield Airport and appeared to have landed before we got there, before I got there.

Q All right. Did you arrive there at the airport?

A Yes, sir. He made the plane, made a low sweep, but didn't actually set down the first time.

Q You saw the plane still in the air yourself?

A Yes, sir, I did.

Q What happened upon your arrival there? You just tell His Honor.

A The plane landed and we blocked the runway or the taxiway to prevent the plane from taking off, at which time he stayed at the end of the runway where he had turned around to come to the taxiway, and stopped. He didn't come up to our vehicles where we had the runway blocked. He sat approximately two minutes, and then came up to the vehicles.

Q What occurred then?

A The pilot of the plane opened a side cockpit window. We were standing on the runway with shotguns. I told him to cut his engines and come out of the plane. He hollered back something. I couldn't understand for the engines running. I told him to cut the engines and come on out of the plane. When he did, he cut his engines. I told him to come on out of the plane. So we started walking toward the back of the plane where the door was.

Q Who is we?

A Myself and Officer Tommy Gordon that was there. He is the one that received the call.

Q All right, sir. Where did you station yourself at the plane after you had told him to come out of the plane?

A I walked on around the tail of the plane and squatted down underneath the tail of the plane with the shotgun, and Officer Gordon come around the side of the plane facing the door straight on, 25 or 30 yards away from the plane.

Q How far away from the doorway of the plane were you?

A Oh, I'd say as far as from me to the front edge of your table there, if that far.

Q All right, sir. What occurred then?

A Mr. Franklin came out of the airplane, opened the door and came out of the airplane. And we told him to turn around and put his hands on the side of the plane. When he did, we searched him.

Q How did that door open?

A The door opens from the tail of the plane, swings forward toward the wing, and he come out of the plane. I had a good view of what was inside the plane as he came out.

Q Were the interior lights of the plane on at that time?

A Yes, sir, they were.

Q What did you observe?

A I observed large sacks appearing to be croker sacks of some type of material stacked in the plane.

Q Did you determine the color of the material stacked there?

A I didn't at that particular time. As we walked up to search Mr. Franklin, you could smell the odor of Marijuana very strong, and now as we removed Mr. Franklin, we entered the plane looking for other subjects, and you could see the Marijuana on the floor.

Q Did you enter the plane knowing whether anybody else was on the plane?

A No, sir, I didn't.

Q Was that your purpose in entering the plane?

A Yes, sir, it was.

Q When you told Mr. Franklin to stop there and put his hands up, did the door remain open?

A No, sir, the door closed all except for just a small crack, maybe two or three inches.

Q All right, sir. When you went up to observe Mr. Franklin or to pat him down, could you see into that crack in the door to the interior of the plane?

A Yes, sir, you could still see through the crack. Officer Gordon went up and patted him down. I didn't approach him at that time until after he had been patted down.

Q All right, sir. Was there anything that you could observe in the doorway of the—on the floor of the passageway there, the aisle?

A Yes, sir. As soon as you opened the door, it was a lot of loose Marijuana laying right on the floorboard. It was—as a matter of fact, they just scraped it up in big handfuls after we started unloading and put it back in the sacks.

Q You say you joined the force in '61?

A Yes, sir, January 1961.

Q Since that time have you had occasion to be around Marijuana?

A Yes, sir, I have, many occasions.

Q Are you familiar with its odor?

A Yes, sir, I am.

Q Was there any question in your mind at the time you smelled the material there that it was, in fact, Marijuana?

A No question at all, sir.

MR. HAYES: I believe that's all.

CROSS-EXAMINATION

BY MR. SIEFFERMAN:

Q All right. Are you a licensed pilot?

A No, sir.

Q For what reason did you block the taxiway at Charlie Brown Airport as this airplane was taxiing up the taxiway?

A We was requested to hold the plane for the Alabama authorities, sir.

Q For what reason?

A I don't know, sir.

Q So you didn't know why you were doing it except that you were told to hold the airplane?

A That's right, sir. We were honoring a request from Alabama authorities to hold the plane.

Q You didn't know if you were asked to hold it because maybe some occupant of the airplane had a sick child in Alabama or what?

A No, sir, I didn't.

Q Okay. Then you stretched a total of three police cars across the taxiway there at the airport?

A No, sir, we didn't; only two.

Q Only two?

A Yes, sir.

Q Which two?

A My car and Officer Gordon's car. Now there was a third car there, but it wasn't stretched across the runway. That was the security—Fulton County-Charlie Brown security car that was behind our two cars.

Q So you are saying that your two cars were across the runway, across the taxiway, however?

A Yes, sir.

Q And they effectively blocked the airplane so it couldn't go anywhere?

A That was our intention, to prevent him from taking off.

Q That was succeeded?

A Yes, sir.

Q Do you remember the pilot leaning out of the window and saying, why don't you just let me taxi on up to the ramp and I'll park it there?

A I remember him saying something. I couldn't understand what he was saying for the engines running, but I didn't want him to take the plane anywhere. I wanted him to leave it right there.

Q And you had, was it one or two shotguns pointed at him?

A I had a shotgun and Officer Gordon had a shotgun. There was two shotguns, but it was not pointed at him. We had them, holding them.

Q And you ordered him to get out of that airplane?

A Yes, sir.

Q And he obeyed?

A Yes, sir, he did.

Q Now he turned off the engines prior to getting out?

A That's correct, sir.

Q Now isn't it correct, sir, that the first time you had any idea what he might have had or what might have been in that airplane was after the engines had been shut

down and after Mr. Franklin got out the door and you were walking up towards Mr. Franklin?

A No, sir. The first idea is as he came out of the door and I saw what was in the plane; and then when I walked up to him I could smell. That was the second time I had suspicion that is what it was.

Q All right. Do you recall the preliminary hearing held out at Fulton County Jail?

A Yes, sir.

Q On June 22nd; and there was a Ms. Judy C. Tedards as the court reporter there?

A I don't remember who the court reporter was, but I remember the hearing.

Q And the question was asked, "What did you observe?" And the answer was given, "I had moved around to the tail of the plane. Officer Gordon had come around to the side with me. He opened the door and stepped out." I assume that means Mr. Franklin, "he" there means Mr. Franklin. "I could see big burlap bags stacked in the plane. I didn't think he was hauling hay."

A That is what I said, yes, sir.

THE COURT: You didn't think he was hauling what?

THE WITNESS: Hay.

THE COURT: All right.

Q (By Mr. Siefferman) Question, "Could you see inside the burlap bags?" Answer, "No, sir." Do you remember that question and that answer?

A The best I remember, that's correct, sir. I could not see inside the bags.

Q Now as I understand it, Lieutenant, Officer Gordon, after patting down and searching Mr. Franklin, led Mr. Franklin away to one of the police cars.

A Yes, sir.

Q And is it shortly thereafter that you reached in and got one of the bags that was in the airplane?

A No, sir, I did not.

Q Did you ever reach in and get one of the bags and open it?

A Eventually we got in the plane. First, sir, we looked for someone else and we climbed over—Officer Gordon climbed over. I told him to climb over the bags to the cockpit to see if anyone else was in the cockpit. (ST 36-45).

(EXAMINATION OF LIEUTENANT ROBERT DEARISO CONTINUED)

REDIRECT EXAMINATION

BY MR. HAYES:

Q All right. When you say you went into the plane to look for—to see if other individuals were in the plane, was there loose Marijuana in the plane at that time?

A Yes, sir, there was.

Q You observed Marijuana without opening any bag at all in the airplane?

A Yes, sir, I did. I had to walk on it to get in the plane. (ST 47).